

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LINDA A. CLARK : Case No.
1600 Olivewood Ave.
Lakewood, OH 44107 :
:
JOHN WHITEMAN : Judge
1943 Drew Avenue
Columbus, OH 43235 :
:
MICHAEL C. RYSH : Magistrate Judge
2551 Marda Drive
Parma, OH 44134 :
:
DOROTHY L. RYSH :
2551 Marda Drive
Parma, OH 44134 :
:
LAURA YEAGER : **NOTICE OF REMOVAL**
6748 Canterbury Road
Madison, OH 44057 :
:
And :
MICHAEL YEAGER : Upon Removal From
6748 Canterbury Road : The Court Of Common Pleas
Madison, OH 44057 : Cuyahoga County, Ohio
: Case No. CV-12-787639
Plaintiffs, :
:
v. :
LENDER PROCESSING SERVICES, INC. :
601 Riverside Avenue :
Jacksonville, FL 32204 :
:
LPS DEFAULT SOLUTIONS :
601 Riverside Avenue :
Jacksonville, FL 32204 :
:
DOCX, LLC :
601 Riverside Avenue :
Jacksonville, FL 32204 :
:

LERNER, SAMPSON & ROTHFUSS :
Terminal Tower :
50 Public Square – Ste. 620 :
Cleveland, Ohio 44113-2201 :
REIMER, ARNOVITZ, CHERNEK & :
JEFFREY CO., L.P.A. :
2450 Edison Blvd. :
Twinsburg, OH 44087 :
And :
MANLEY DEAS KOCHALSKI LLC :
55 Public Sq. Ste. 1828 :
Cleveland, OH 44113 :
Defendants. :

PLEASE TAKE NOTICE that Defendant Lender Processing Services, Inc. (“LPS”), by and through its counsel files its Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1453 and based upon 28 U.S.C. §§ 1332 et seq., and more specifically the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), and for the reasons stated herein removes this case, styled *Clark v. Lender Processing Services, Inc.* (the “Action”), to the United States District Court, Northern District of Ohio, Eastern Division.

I. INTRODUCTION

(1) On or about July 23, 2012, Linda A. Clark, Jeff Doehner, Julie Doehner, Nina Lowery, John Whiteman, Laura Yeager, and Michael Yeager, as individuals and on behalf of a putative class of similarly situated persons, filed their initial Class Action Complaint seeking recovery under the Ohio Consumer Sales Practices Act, among other claims, in the Court of Common Pleas, Cuyahoga County, Ohio. Plaintiffs brought claims against: LPS; LPS Default Solutions, Inc.; DocX, LLC; Fidelity National Information Services, Inc.; American Home Mortgage Servicing, Inc.; Lerner, Sampson & Rothfuss; Reimer, Arnovitz, Chernek & Jeffrey

Co., L.P.A.; and Manley Deas Kochalski LLC.

(2) On August 23, 2012, Plaintiffs Clark, Whiteman, and the Yeagers filed a First Amended Class Action Complaint For Violations Of The Ohio Consumer Sales Practices Act And Injunctive Relief, adding Plaintiffs Michael C. Rysh and Dorothy L. Rysh (altogether, "Plaintiffs"). The First Amended Complaint removed Jeff and Julie Doehner, and Nina Lowery as Plaintiffs in this Action. The First Amended Complaint also removed Fidelity National Information Services, Inc. and American Home Mortgage Servicing, Inc. as Defendants in this Action.

(3) Removal of this Action is timely under 28 U.S.C. § 1446(b) because LPS was served with the initial Complaint on July 30, 2012, and this Notice is filed within thirty days of service of the initial Complaint. LPS specifically reserves all defenses, including but not limited to improper or lack of service, lack of personal jurisdiction, and failure to join necessary or indispensable parties.¹

(4) Copies of all state court filings currently made available by the Cuyahoga County Clerk of Courts, including the initial Complaint and its attached Exhibits, are attached hereto as Exhibit A.

(5) As of the time of this filing, LPS has not received a service copy of the First Amended Complaint and attached exhibits. Nor is the First Amended Complaint and attached exhibits currently available in the Cuyahoga County Clerk of Courts. LPS will promptly supplement this Notice of Removal with a complete copy of the First Amended Complaint and attached exhibits as soon as a service copy is received, or such copy is made available by the Cuyahoga County Clerk of Courts.

¹ Upon information and belief, LPS specifically notes that Defendant Manley Deas Kochalski LLC has not yet received service of process of the summons, the initial Complaint, or the First Amended Complaint.

(6) A civil action filed in state court may be removed to federal district court if the district court has “original jurisdiction” over the matter. 28 U.S.C. § 1441(a). Under CAFA:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which—(A) any member of a class of plaintiffs is a citizen of a State different from any defendant; (B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or (C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

28 U.S.C. § 1332(d)(2), *see also Mell v. Anthem, Inc.*, --- F.3d ----, 2012 WL 3023537, *9 n.3 (6th Cir. 2012).

(7) Removal is proper in the instant case based upon CAFA, and, in particular, 28 U.S.C. § 1332(d), and pursuant to 28 U.S.C. §§ 1441(a) and 1453, as the prerequisites for removal are satisfied here: (a) Plaintiffs’ putative class as proposed in the Complaint exceeds 100 members; (b) there is minimal diversity between Plaintiffs and Defendants, as LPS is a Delaware corporation having a principal place of business in Florida, as defined in CAFA, and the local controversy exception does not apply; and (c) the purported claims of the individual class members, based upon the allegations in the Complaint, exceed \$5,000,000. Accordingly, removal is proper.

II. THE ALLEGED CLASS EXCEEDS 100

(8) The Complaint defines the putative class as “All Ohio citizens who were (a) defendants in judicial foreclosure actions on first lien mortgages on their homes that were purportedly held by securitization trusts, and that were knowingly initiated and prosecuted by Defendants on behalf of parties that lacked legal standing to do so, and (b) who were damaged by Defendants’ abusive foreclosure practices . . .” (Compl. ¶ 1; First Am. Compl. ¶ 1.)

(9) According to Plaintiffs, the putative class consists of two sub-classes, an

injunctive relief sub-class and a monetary relief sub-class, each of which Plaintiffs allege “encompasses many hundreds and perhaps thousands of individuals.” (Compl. ¶¶ 259, 268; First Am. Compl. ¶¶ 241, 250). Accordingly, there is no question that the allegations of the Complaint denote a class that is in excess of 100 members. *See* 28 U.S.C. § 1332(d)(5) (noting plaintiff class must exceed 100).

III. MINIMAL DIVERSITY EXISTS

(10) The class representatives are all, according to the Complaint, citizens of Ohio. (Compl. ¶¶ 20-24; First Am. Compl. ¶¶ 20-23.) Plaintiffs, in their Complaint, also allege that Defendant LPS is a Delaware corporation with its principal place of business in Florida. (Compl. ¶ 25; First Am. Compl. ¶ 24.). Furthermore LPS Default Solutions, Inc. is a Delaware corporation with its principal place of business in Minnesota. Consequently, minimal diversity exists for purposes of CAFA. *See* 28 U.S.C. § 1332(d)(2).

(11) Furthermore, neither the local controversy exception nor the home-state exception under CAFA applies as, during the three year period preceding the filing of the Complaint, several class actions were filed asserting the same or similar factual allegations against LPS or one or more of the co-defendants on behalf of other persons. *See* 28 U.S.C. §§ 1332(d)(3) and (4). In addition, the law firm defendants are not parties from whom significant relief is sought by the purported class and are not defendants whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class. *See* 28 U.S.C. § 1332(d)(4)(A)(i).

IV. THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION

(12) In determining the amount in controversy, the plaintiff is the “master of his complaint.” *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 409 (6th Cir. 2007). Thus, courts first look to the complaint. “[U]nless the law gives a different rule, the sum claimed

by the plaintiff controls.” *St. Paul Mercury Indem. Co. v Red Cab Co.*, 303 U.S. 283, 290 (1938).

(13) In the instant case, Plaintiffs allege that the amount in controversy “exceeds \$5 million.” (Compl. ¶ 269; First Am. Compl. ¶ 251). LPS need only demonstrate that based on the allegations in the Complaint that the purported damages might exceed \$5 million. LPS has met that burden and therefore removes this case to federal court.

V. THE CONSENT OF OTHER DEFENDANTS IS NOT REQUIRED

(14) CAFA provides that a defendant may remove an action without obtaining the consent of the other defendants in the action. *See* 28 U.S.C. § 1453(b); *Capital One Bank (USA) N.A. v. Jones*, 710 F. Supp. 2d 630, 633 (N.D. Ohio 2010); *Westwood Apex v. Contreras*, 644 F.3d 799, 801 (9th Cir. 2011); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. 2006). Thus, LPS is not required to obtain the consent of its co-defendants in this matter prior to removal.

VI. CERTIFICATION UNDER FEDERAL RULES OF CIVIL PROCEDURE

(15) This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, this Action, pending in the Court of Common Pleas Court for Cuyahoga County, Ohio, is properly removed to this Court by Lender Processing Services, Inc. pursuant to 28 U.S.C. §§ 1441 & 1453, and 28 U.S.C. §§ 1332(d).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 27, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system. In addition, a copy of the foregoing was also served by regular U.S. Mail upon:

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